

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

OLLIE M. DARBY,	:	
	:	
Plaintiff,	:	
	:	NO. 1:02-CV-00933
	:	
v.	:	
	:	ORDER
	:	
UNITED STATES DEPARTMENT OF	:	
ENERGY, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Magistrate Judge's March 8, 2005 Report and Recommendation (doc. 41), Plaintiff's Objections (doc. 45), and Defendants' Response (doc. 46).

I. Background

Proceeding pro se, Plaintiff Ollie M. Darby ("Darby") filed her Complaint on December 10, 2002, against her former employer, United States Department of Energy ("DOE"), alleging unlawful racial discrimination, retaliation, and reprisal pursuant to 42 U.S.C. § 2000 et seq (doc. 1). Ms. Darby is an African American female. Initially, she filed two complaints against the Defendants with the Equal Employment Opportunity Commission ("EEOC") averring racial discrimination (Id.). In regards to both complaints, the EEOC found that Plaintiff failed to establish a prima facie case of race for any of her claims of violations of Title VII. Plaintiff claims that following her filing of

complaints with the EEOC, Defendants engaged in retaliatory acts (doc. 1). After exhausting all of her administrative remedies, Ms. Darby filed this Complaint. On March 25, 2003, the Defendant answered the Plaintiff's Complaint contending that Ms. Darby failed to exhaust all administrative remedies and that she failed to provide a claim upon which relief could be granted (doc. 5).

On June 17, 2003, the Plaintiff asked the Court to have two related cases, C-1-02-936 and C-1-02-937, which were originally filed in the District of Columbia, consolidated with this case (doc. 9). The assigned Magistrate Judge granted this motion (doc. 11). Shortly thereafter, Defendant filed a motion to consolidate this pending case with two additional related cases, C-1-03-291 and C-1-03-292 (doc. 12). The Magistrate Judge also granted this motion (doc. 13). Therefore, these four cases and the pending instant Complaint have been consolidated under this case, No. 1:02-CV-933.

On May 13, 2004, the Defendant Department of Energy ("DOE") filed a motion for summary judgment contending Plaintiff failed to present evidence that any of the actions taken by the Defendant constitute racial discrimination (doc. 18). Defendant DOE argues it did not treat Ms. Darby any differently than any similarly situated individuals who were not minorities, nor did it engage in any adverse or discriminatory actions (Id.). On July 30, 2004, Plaintiff filed a response in opposition to the DOE's motion

for summary judgment (doc. 36). Ms. Darby contends she has demonstrated to the Court that she has a prima facie case of disparate treatment, because she has proven that she was given different treatment than that of similarly situated individuals not of a protected group (Id.). In addition, she contends that Defendants have not assumed the burden of offering a legitimate, nondiscriminatory reason for the actions allegedly taken against her (Id.).

On March 8, 2005, the Magistrate Judge offered a Report and Recommendation to the Court recommending that Defendant DOE's Motion for Summary Judgment be granted (doc. 41). The recommendation was offered based on the Magistrate Judge's conclusion that Plaintiff failed to meet the "burden of showing that a genuine issue of material fact exists with respect to her claims of discrimination, retaliation, and reprisal" (Id.). The parties were provided proper notice of the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(C), including notice that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). On April 29, 2005, Ms. Darby filed an objection to the Report and Recommendation contending there are issues of material fact and evidence qualifying the complaint for a jury trial, and that many of the employees of the Defendant have refused to participate in

the case (doc. 45). On May 5, 2005, Defendants filed a Reply to the Plaintiff's Objection to the Report and Recommendation averring that Plaintiff fails to object to specific portions of the Report and Recommendation and instead reiterates portions of her Memorandum opposing the Motion for Summary Judgment (doc. 46). In addition, Defendants contend that Plaintiff could easily have deposed any former employees, but chose not to do so (Id.).

Upon de novo review pursuant to 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation thorough, well reasoned and proper. Specifically, Plaintiff fails to refute any of Defendants' justifications of their actions or provide evidence that such actions constituted discrimination on the basis of race or gender. The Magistrate Judge correctly parsed through each of Plaintiff's claims and found them unsupported. The Court agrees with the Magistrate Judge's conclusion that no reasonable jury would be able to find that the facts of this case establish a violation of Title VII; therefore, a grant of summary judgment in the Defendant's favor is appropriate.

For the foregoing reasons, Plaintiff's Objections to the Report and Recommendation (doc. 45) are OVERRULED. The Report and Recommendation (doc. 41) is ADOPTED IN ITS ENTIRETY. The Defendant's Motion for Summary Judgment (doc. 18) is GRANTED. The Clerk is instructed to enter judgment in favor of Defendant United States Department of Energy and to remove the instant case from

this Court's docket.

SO ORDERED.

Dated: August 24, 2005

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge